

**Letter of Findings: 03-20120372P**  
**Withholding Tax**  
**For the Tax Period Ending December 31, 2011**

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**ISSUE**

**I. Withholding Tax – Late Payment Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer seeks abatement of the penalty for late payment of employee withholding tax.

**II. Tax Administration – Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. For the period ending December 31, 2011, Taxpayer was required to remit Indiana employee withholding taxes on March 15, 2012. However, Taxpayer's tax preparer remitted Indiana employee withholding tax on April 5, 2012, twenty days after the deadline. The Indiana Department of Revenue ("Department") assessed interest and a ten-percent penalty for the late payment of employee withholding tax.

Taxpayer protests the penalty and interest, requesting abatement. A hearing was held on Taxpayer's protest and this Letter of Findings results. Additional facts will be provided as necessary.

**I. Withholding Tax – Late Payment Penalty.**

**DISCUSSION**

Taxpayer argues that it is entitled to abatement of the penalty for the late payment of employee withholding tax.

IC § 6-8.1-10-2.1 states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including an assessment of a penalty – is presumptively valid.

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer requests abatement because it claims to have a clean filing history and because the filing deadline

for the return is, in Taxpayer's opinion, confusing. However, for the period ending December 31, 2010, Taxpayer or Taxpayer's preparer also remitted employee withholding taxes on behalf of Taxpayer after the statutory deadline. For that period, the Department abated Taxpayer's penalty, and therefore an abatement based on having a clean history and for confusion on the filing deadline is not warranted.

Taxpayer has also not proved that this was not negligence, and the preparer, standing in Taxpayer's shoes, did not exercise "ordinary business care and prudence." Therefore, the penalty was properly imposed.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Interest.**

**DISCUSSION**

The Department assessed interest on the late payment of withholding tax. Taxpayer requested that the Department waive interest.

IC § 6-8.1-10-1(a) provides, in relevant part, as follows:

If a person... fails to pay the full amount of tax... by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

**FINDING**

Taxpayer's protest of interest is respectfully denied.

*Posted: 02/27/2013 by Legislative Services Agency*

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